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THE OMAHA DAILY BEE

THE WEATHER
Fair

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OMAHA, FRIDAY MORNING, DECEMBER 12, 1913—FOURTEEN PAGES.

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SUIT TO TEST INCOME TAX LAW GOES DIRECT TO SUPREME COURT

Judge Landis of District Court Rules
that He Has No Jurisdiction
in the Matter.

CASE FILED BY AN ACTRESS
Woman Living in France Sues a
Bank at Chicago.

WITHHELD TAX ON DIVIDENDS
Complaint Alleges that Law is Un-
constitutional.

BOURKE COCKRAN ATTORNEY
New York Lawyer Argues that Tax
is Unconstitutional Because
Scale is Not Higher on
the Larger Incomes.

CHICAGO, Dec. 11.—The suit to test the income tax law was thrown out of the United States district court here today by Judge Landis, who decided that he had no jurisdiction. The effect of his decision, which does not involve the constitutionality or unconstitutionality of the law, is to send the case direct to the supreme court of the United States.

The medium selected for the attack on validity of the law is a suit in which Elsie DeWolfe, the former actress, a citizen of New York, now resident at Versailles, France, in plaintiff and the Continental and Commercial Trust and Savings bank of Chicago is defendant. W. Bourke Cockran of New York and Colin C. H. Fyffe of Chicago, appeared for Miss DeWolfe and Laver May of Chicago for the bank.

Says Law is Inequitable.
Miss DeWolfe, owner of thirty 5 per cent bonds of the Appalachian Power company, was refused payment of interest due on the bonds December 1 last by the bank because she had not filed a certificate of ownership which the bank claims is required by the income tax law. Her suit is for interest and damages in the sum of \$1,000.

In the presentation of his case Attorney Cockran asserted that the law taxes only 42,000 persons out of a population of 90,000,000, which tax, he said, was imposed on them without their consent by the untaxed remainder of the population.

Even if congress has the right to impose this tax the lawyer said it was graded with such gross inequalities as to violate the constitution.

His client's income, he said, was more than \$20,000 a year, on which she is taxed 1 per cent on all above \$3,000, and an additional tax of 1 per cent on all in excess of \$20,000. He asserted that if this ratio were equitably pursued the government's income from the tax would be \$75,000,000, a sum practically sufficient to defray all government expenses. By its present provisions, he said, the income would not be more than \$20,000,000.

Suit Against Bank.
Attorney Cockran insisted that if all incomes were taxed in the same ratio as that of the plaintiff, those of more than \$20,000 would be subject to a penalty of 10 per cent instead of the present 5 per cent; those of \$10,000 or more to a penalty of 20 per cent instead of 10; incomes of \$5,000 would be penalized 30 per cent instead of 7. A man with an income of more than \$2,500,000 a year, and the lawyer said there were several in the country—would be assessed 100 per cent, or, in other words, would have to pay all in excess of \$2,500,000 into the United States treasury.

Thus, he argued, his client was not granted the equal protection of the law guaranteed by the fourteenth amendment to the constitution.

Mr. Mayer stated the position of the bank as that the law is unconstitutional. In his demurrer filed yesterday he further contended the bonds constitute a civil contract in no wise involving federal laws, and that the federal court therefore had no jurisdiction.

The question of jurisdiction occupied counsel all forenoon after the points specifically at issue had been stated. The case will go directly to the supreme court of the United States from the district court.

Jurisdiction is Only Issue.
WASHINGTON, Dec. 11.—Consideration of the case by the supreme court of the United States is expected.

(Continued on Page Two.)

The Weather

Forecast till 7 p. m. Friday.
For Omaha, Council Bluffs and vicinity—Fair; not much change in temperature.
Temperature at Omaha Yesterday:
High 38, low 25, mean 31.
Precipitation .00 inch.
Wind light S. by E. 3 to 5 m.p.h.
Relative humidity 65 per cent.
Normal temperature 38.
Excess for the day 0.
Precipitation since March 1 .00 inch.
Deficiency since March 1 .00 inch.
Deficiency for cor. period, 1912-13 .00 inch.
Deficiency for cor. period, 1911-13 .00 inch.
Reports from stations at 7 P. M.
Temp. High—Rain—
Stations. Clear. Fair. Partly Cloudy. Cloudy. Snow. Fog. Ice.

Comparative Local Record.

| | 1912 | 1911 | 1910 |
|---|----------------|----------------|----------------|
| Highest yesterday | 38 | 37 | 35 |
| Lowest yesterday | 25 | 24 | 21 |
| Mean temperature | 31 | 30 | 28 |
| Precipitation | .00 | .00 | .00 |
| Wind | light S. by E. | light S. by E. | light S. by E. |
| Relative humidity | 65 | 65 | 65 |
| Normal temperature | 38 | 38 | 38 |
| Excess for the day | 0 | 0 | 0 |
| Precipitation since March 1 | .00 | .00 | .00 |
| Deficiency since March 1 | .00 | .00 | .00 |
| Deficiency for cor. period, 1912-13 | .00 | .00 | .00 |
| Deficiency for cor. period, 1911-13 | .00 | .00 | .00 |
| Reports from stations at 7 P. M. | | | |
| Temp. High—Rain— | | | |
| Stations. Clear. Fair. Partly Cloudy. Cloudy. Snow. Fog. Ice. | | | |

Indicates trace of precipitation.
—W. WELSH, Local Forecaster.

TAKES POISON AS WAITS JURY

Mrs. Maggie Johnson Swallows Car-
bolic Acid at Wahoo.

JURORS REACH AN AGREEMENT
Verdict in Murder Case Delayed by
Attempted Suicide of Defend-
ant After Nine Hours' Wait.

WAHOO, Neb., Dec. 11.—(Special Tele-
gram.)—Strain of waiting for the verdict of the jury deliberating in her case, wherein she was charged with murder-
ing her husband, John Johnson, was too
great for Mrs. Maggie Johnson tonight,
and she swallowed carbolic acid. The
news had just reached her that the jury
had arrived at an agreement after being
out nine hours.

The woman was in the basement of
the court house at the time, having been
allowed a little freedom by the sheriff
and the consolation of her family, while
the jury was deliberating. How she ac-
quired the poison is not known, but at
8 o'clock she was found suffering from
its effects and a physician was sum-
moned.

Under the criminal law the verdict in
a criminal case must be made in the
presence of the defendant and the jury
will not report until Mrs. Johnson re-
covers sufficiently to be borne into the
court room on a stretcher or until some
other termination of the case is reached.

Tell of Father's Murder.
Susie and Sibbie Johnson, witnesses in
the trial of their mother for the murder
of their father, testified for the prosecu-
tion yesterday. They told of the fight
ending in the death of "Dutch" John
Johnson and of the subsequent dismem-
berment of the man's body by their
mother. They told of the quarrel that
led up to the killing of their father, say-
ing that it was started by Mr. Johnson
and that it was concerning money.

Susie, aged 13, told of her father's at-
tack upon her mother with a butcher
knife, and that Mrs. Johnson in self-de-
fense struck him with a club, which
floored him. Susie went up then and
took the knife from her father.

Her father then said: "I'll get you yet
and the whole outfit," whereupon Mrs.
Johnson delivered another blow with the
club, which caused his death, striking
him over the left eye and temple. She
then took the body down the ladder into
the cellar, where the following night Sib-
bie, aged 11, held the lantern while her
mother chopped his legs off with an ax.
Later they drove up the Narrows, south
of Ashland, where Mrs. Johnson dumped
the body into Salt Creek.

Sheriff Dailley testified that Mrs. John-
son had told him in the presence of
County Attorney Berggren that she had
chopped his legs off because Johnson had
"treated her so mean," also that Mrs.
Johnson said she had found the body in
the Narrows after Johnson had been killed.
She found no money on his person.

Dr. War, who is physician on the
Board of Insanity Commissioners, testi-
fied that he had examined Mrs. Johnson
and he considered her below normal in-
telligently, that her mind was that of a 16-
year-old child, although he thought her
able to distinguish right from wrong.

The defense put on lot three witnesses,
John Craft, the marshal of Ashland;
Louis Johnson, the oldest daughter of
the defendant; and Dr. A. S. Von Mans-
feld. The doctor testified that the de-
fendant worked for him before she was
married, when she was 35 years old, and
that he had always considered her far
below a person with a normal mind. His
testimony was very similar to that of
Dr. War.

The defense rested and after a short
recess County Attorney Berggren opened
the argument for the state. Senator
Plack followed for the defense.

Richard R. Marnell Leaves All to Niece in a Will Just Found

A will made nearly three years ago by
the late Richard R. Marnell, who died
December 7, leaving an estate worth
more than \$100,000 and which leaves the
entire amount to his niece, Mamie Con-
nelly of Milwaukee, was discovered yes-
terday. It had been supposed that he
left the estate and his son, Edward W.
Marnell, and his daughter, Mrs.
Della W. Cunningham an Mrs. Kate A.
Rich, all of Omaha, would inherit the
estate.

Mr. Marnell's will disinherits his chil-
dren, providing that after debts are paid
his entire estate shall go to his niece.
The document had been deposited in pro-
bate court. It was dated January 9, 1911.
Ignorant of the fact that a will ex-
isted, the supposed Omaha heirs filed a
petition in probate court setting forth
that they were legally entitled to inherit
the estate. They indicated that they
would contest the will after being in-
formed of its existence.

Baby Bear Born at Riverview Park

An Omaha-reared bruin is at last a
reality. For years the keepers at Riv-
erview park have hoped to have a baby
bear born in the big rocky bear pit in
the city's natural park, but not until
this last season has the hope been real-
ized.

R. L. Roberson, the keeper in charge,
is also proud of the fact that the park has
reared two buffalo calves and three
lions during the season. He considers
the record a good one, especially in view
of the hot, dry weather during the sum-
mer months.

SUBURBS OF TAMPICO CAPTURED BY REBELS

Constitutionalists Reported to Have
Taken Dona Cecilia, Containing
Oil Tanks and Refinery.

ARBOL GRANDE ALSO SEIZED
Government Advances Received
Capital Hopeful.

SAY FEDERAL
Announced Officially That Be Pro-
moted to Gallantry.

NO FOREIGNERS INJURED YET
Grave Fears Felt that Attacking
Forces May Fire on Oil Tanks
on Both Sides of the
River.

VERA CRUZ, Mexico, Dec. 11.—Fight-
ing between the rebels and federalists for
possession of the city of Tampico was in
progress all day yesterday and last night,
according to reports received from Rear
Admiral Fletcher, commander of the
American warships off that port. A dis-
patch filed at 11 o'clock last night and
received here this morning said the fed-
eral outposts had been driven in and that
the insurgents had taken possession of the
left bank of the river from its mouth to
Tampico.

No foreigners have been injured, the
admiral said, nor has any property been
destroyed. A number of refugees were
taken on board the United States scout
cruisers Chester and Tacoma. The
refugees were in buildings near the water
front.

Another dispatch sent by Admiral
Fletcher from Tampico at an earlier hour
yesterday and received at Vera Cruz this
morning said:
"General Castro attacked Tampico this
morning. Reports indicate the rebel band
is pushing back the federal advance
guard."

"I am taking all possible measures to
protect and care for foreigners except
British and German subjects, who are
being looked after by their own repre-
sentatives."

"The rebels are reported to be respect-
ing Americans and American property."
The British cruiser Berwick arrived
here today from Puerto, Mexico, and
probably will proceed to Tampico.

Grave fears are felt here lest the in-
surgents should fire the oil tanks lining
both sides of the river at Tampico, in
which event it is believed the warships
will be compelled to retire down the
river.

Extraordinary arrangements are being
made by the military authorities to com-
plete the loading of ammunition on board
the Mexican gunboats, Vera Cruz and
Progreso. The boats will probably leave
for Tampico late this afternoon.

MEXICO CITY, Dec. 11.—Official ad-
vices received here state that heavy
fighting occurred at Tampico last night.
The rebels at one time forced the fed-
eral troops back into the heart of the city.
The rebels are said to be in possession
of the suburb of Dona Cecilia, located
between Tampico and the coast and con-
taining many oil tanks and a refinery.
They have also taken Arbol Grande, an-
other suburb.

The federal war department advises,
however, continue to indicate government
troops are successfully resisting the rebel
attack. It is announced at the war office
that the federal officers in command of
the garrison are to be promoted for gal-
lantry.

Madrid Bank Loaded With Mexico Paper, Suspends Payment

MADRID, Dec. 11.—The Hispano-Amer-
icano bank suspended payment again
today. It had been obliged to do so tem-
porarily yesterday owing to a run, but
the bank of Spain came to its assist-
ance. It was reported the bank was
overloaded with Mexican securities.

The Hispano-Americano bank filed its
declaration of suspension of payments
in the law courts today after a lengthy
conference between the bank officials
and the governor of the Bank of Spain.
The minister of finance later declared
the Bank of Spain had lent \$4,000,000 to
the Hispano-Americano bank and had
offered it another \$2,000,000, the latter
sum had been declined by the Hispano-
Americano bank on the ground it was
not enough to meet the demands of de-
positors, which amount to \$20,000,000. All
the depositors were demanding their
money, it was explained, and the offi-
cers had decided it was better to sus-
pend payments now than later.

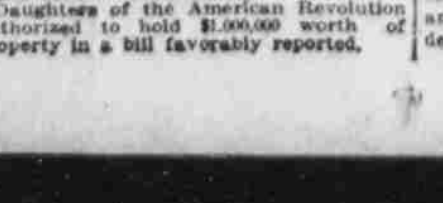
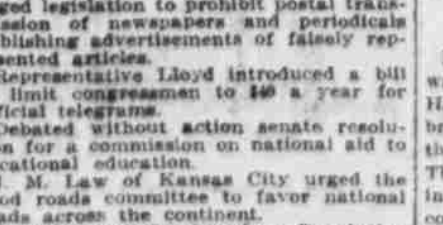
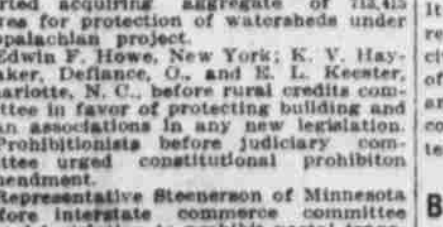
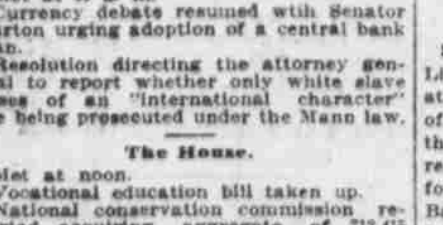
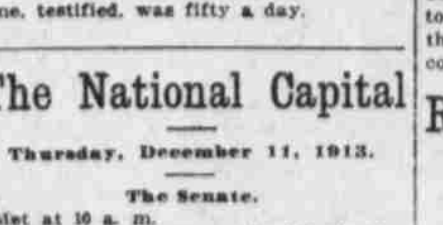
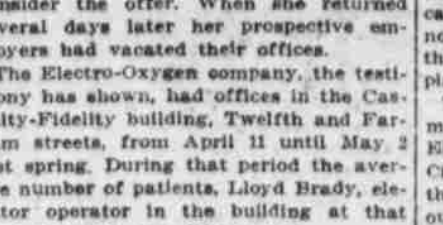
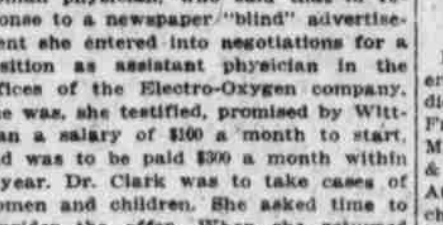
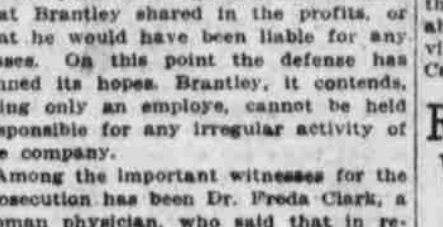
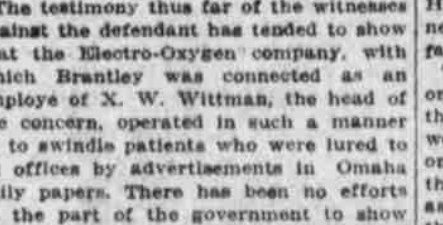
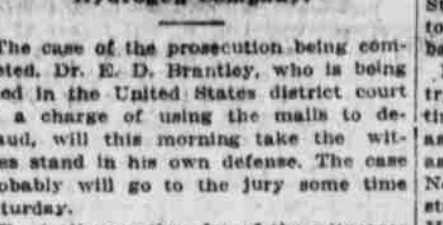
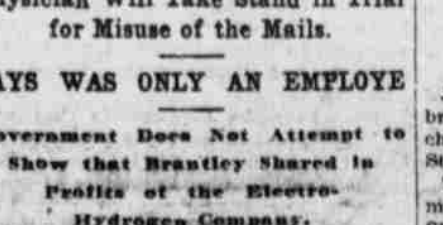
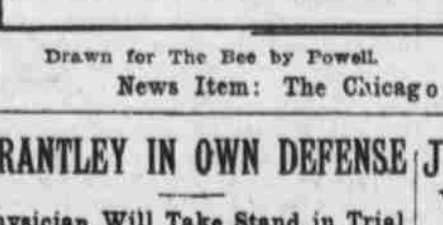
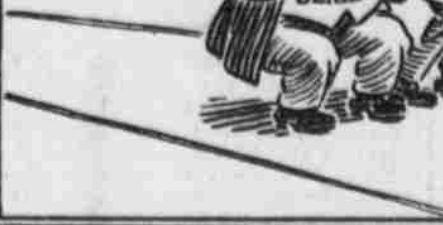
Long lines of depositors besieged the
doors of the bank from an early hour
this morning. Those who had securities
deposited there for safe keeping were
allowed to withdraw them. The finance
minister announced to the bank's de-
positors that if the Spanish government
could find a means of avoiding losses to
them it would do so.

Iowan Marries the Widow of Deceased Brother in Omaha

Theodore P. Weinhart of Boone, Ia., met
Mrs. Helen M. Weinhart of Eugene, Ore.,
widow of his deceased brother, for the
first time yesterday, secured a mar-
riage license in county court and a few
minutes later was wedded to her by
Rev. J. M. Leidy.

The courtship was conducted by corre-
spondence and Mr. and Mrs. Weinhart
arranged to meet in Omaha. The trip
to the court house immediately followed
their introduction. Mrs. Weinhart's
former husband died several years ago. Mr.
Weinhart was divorced six months ago.
The groom owns a farm near Boone,
and the bride owns one in Oregon. Each
is trying to persuade the other to change
residence. They went to Boone and there
decided whether they are to live in
Iowa or in Oregon. He is 34 years of age
and she is 31.

An Idea—Put Rollers Under Him



BRANTLEY IN OWN DEFENSE

Physician Will Take Stand in Trial
for Misuse of the Mails.

SAYS WAS ONLY AN EMPLOYEE
Government Does Not Attempt to
Show that Brantley Shared in
Profits of the Electro-
Hydrogen Company.

The case of the prosecution being com-
pleted, Dr. E. D. Brantley, who is being
tried in the United States district court
on a charge of using the mails to defraud,
will this morning take the witness
stand in his own defense. The case
probably will go to the jury some time
Saturday.

The testimony thus far of the witnesses
against the defendant has tended to show
that the Electro-Hydrogen company, with
which Brantley was connected as an
employee of N. W. Wittman, the head of
the concern, operated in such a manner
as to swindle patients who were lured to
its offices by advertisements in Omaha
daily papers. There has been no effort
on the part of the government to show
that Brantley shared in the profits, or
that he would have been liable for any
losses. On this point the defense has
pinned its hopes. Brantley, it contends,
being only an employee, cannot be held
responsible for any irregular activity of
the company.

Among the important witnesses for the
prosecution has been Dr. Freda Clark, a
woman physician, who said that in re-
sponse to a newspaper "blind" advertise-
ment she entered into negotiations for a
position as assistant physician in the
offices of the Electro-Hydrogen company.
She was, she testified, promised by Witt-
man a salary of \$100 a month to start,
and was to be paid \$300 a month within
a year. Dr. Clark was to take cases of
women and children. She asked time to
consider the offer. When she returned
several days later her prospective em-
ployers had vacated their offices.

The Electro-Hydrogen company, the testi-
mony has shown, had offices in the Cas-
ualty-Fidelity building, Twelfth and Far-
nam streets, from April 11 until May 2
last spring. During that period the aver-
age number of patients, Lloyd Brady, el-
evator operator in the building at that
time, testified, was fifty a day.

Railroads Charged With Shipping Stock From South Illegally

KANSAS CITY, Mo., Dec. 11.—The fed-
eral grand jury today returned three in-
dictments against the St. Louis & San
Francisco railroad, two each against the
Missouri Pacific and Missouri, Kansas
& Texas railroads and one against the
Atchafalpa, Topeka & Santa Fe. It is
charged the railroads shipped southern
cattle afflicted with Texas fever to
northern markets without placards on
the cars with the words "Southern" in
plain sight.

The grand jury also returned indict-
ments against St. Stephen Harris and J.
Elmer Goss, members of a large Kansas
City jewelry firm, charging them with
the misuse of the mails in the carrying
out of an alleged scheme to defraud cus-
tomers. The company sold jewelry on
the installment plan throughout the
country.

Recruits Blamed for Zabern Trouble Are Given Short Terms

STRASSBURG, Germany, Dec. 11.—
Light sentences were pronounced today
at the court-martial of three recruits
of the Ninety-ninth infantry regiment,
through whom the insulting remarks in
reference to Alsatians and the French
foreign legion uttered by Lieutenant
Baron von Forstner were made public.
It was this incident which started the
recent trouble between the military and
civil population of Zabern. The principal
offender was condemned to six weeks
and the other two men to three weeks
confinement each. Long penitentiary sen-
tences had been generally expected.

BOMB THROWN INTO PITTSBURGH STORE

PITTSBURGH, Pa., Dec. 11.—A bomb
was tossed across Second avenue in the
Hazelwood section of the city at day-
break today and, exploding, shattered
the front of the building occupied by
Thomas Giori as a fruit store. Windows
in the Hazelwood Savings and Trust
company building next door were broken
and other damage done, but the police
declare no one was injured.

UNDERWOOD DEFENDS SELF FROM ATTACKS BY HOBSON ON FLOOR

Members Applaud Majority Leader
as He Says His Remarks Mis-
interpreted.

GALLERY CHEERS OPPONENT
Prohibition Enthusiasts Shatter
Rules of Body with Shouts.

THEIR CHAMPION IS EXCITED
Says Let Party Decline if It Can't
Abide Wholly Dry.

MANN DEMANDS RULE OBSERVED
Representative Mann of Tennessee,
in Chair, Admonishes Specu-
lators and Quiet is Re-
stored.

WASHINGTON, Dec. 11.—Shattering
the rules of the house of representatives,
champions of prohibition, who packed the
gallery late today, broke into repeated
outbursts of applause and actually
shouted from their seats as Representa-
tive Underwood, who is presently
submitting a constitutional prohibition
amendment to the states.

The extraordinary demonstration con-
tinued untroubled for many minutes as
Mr. Underwood proceeded dramatically to
discuss the prohibition question and was
not checked until the speaker had drawn
into controversy his colleague, Repre-
sentative Underwood, who I snow en-
gaged with him in a race for the sen-
ate. The injection of personal politics
into the situation brought the majority
leader to his feet with a reply to Mr.
Hobson and this precipitated applause
from the members on the floor.

Quiet Restored.
Republican Leader Mann, at this point,
demanded that the rules of the house
be observed and Representative Moon
of Tennessee, who was in the chair, ad-
monished the spectators. Quiet was re-
stored temporarily after a voice from
the gallery shouted:
"We're American citizens."

In the course of his speech, Mr. Hob-
son had said:
"We ought to have our party under-
stand now while the war is on that it
never was intended for an alliance with
the liquor interests. Yet there is a great
demand, a great Alabama who is present-
ly, who recently announced that—
that at least the way I read the re-
ports—that if prohibition continues to be
rejected into democratic politics, either
prohibition would be ground to the dust
or the democratic party must decline."

"Then Let It Decline."
"I take second place to no man who
leaves his party, and let me tell you that
if the democratic party can only live
by joining with the liquor interest to de-
bauch the American people, then in God's
name let it decline."

Mr. Hobbs fairly shouted these words
as he reached the climax. With arms
waving in the air, shaking his head ad-
dressed from the packed galleries pro-
longed most in the faces of members who sat
near him, including Mr. Underwood, he
drew from the packed galleries prolonged
cries. The stamping of feet in the
gallery increased the din. Before the
tumult had subsided Representative Un-
derwood, who had been listening quietly
up to this time, rose in his place. Cheers
and handclapping from democratic and
republican members on the floor greeted
him.

"I wish to say to the gentleman from
Alabama," Mr. Underwood began, "that I
regret exceedingly that in a preceding
petition for the state of prohibition to
the house that he should have drawn
into his speech a partial utterance of
mine that misrepresents my remarks. At
some other time and in the proper place
I will interpret my own remarks."

Mr. Underwood replied he thought he
had been justified in his remarks and that
he had correctly quoted Mr. Underwood,
suggesting that the latter be given all
the time he wanted to interpret his re-
marks to the house. Cheers came from
the gallery and Mr. Underwood again
rose.

Won't Denial House.
"I am not going to detain the house
now," he said. "The gentleman from
Alabama has made a partial statement
that did not reflect my views. I do not
think that the floor of this house, with
public business before us, is the proper
place for the gentleman or myself to drag
out personal differences. I occupy the
position of the leader of the party in this
house, and I cannot, occupying that po-
sition, engage in a personal controversy
with the gentleman from Alabama, as
(Continued on Page Two.)

Spokesmen for Drys Appear Before the House Committee

WASHINGTON, Dec. 11.—Spokesmen
for the Anti-Saloon league and the
Woman's Christian Temperance union
urged the house judiciary committee to-
day to favorably report the resolution
for a prohibition amendment introduced
yesterday by Representative Hobson of
Alabama.

Mr. Hobson made the opening argument
outlining the purpose of prohibitionism
to submit practical evidence to the com-
mittee from time to time of the de-
vastation occasioned by alcohol.

Dr. Baker, president of the Anti-Saloon
League of America; Dr. Rufus W. Mil-
ler, representing the commission on
temperance of the Federal Conference of
Churches; Lillian M. N. Stevens and
Mary Harris Armour of the Woman's
Christian Temperance union also urged
the amendment.

SENTENCED TO PEN FOR CORNERING CALF MARKET

KANSAS CITY, Mo., Dec. 11.—John
Akins, president of the Missouri and
Kansas Calf and Cattle company,
charged with obtaining money by trick
in connection with an alleged corner of
the local calf market, was found guilty
late today and sentenced to two years
in the penitentiary. Orland S. Bone,
chief buyer of the company, was ac-
quitted of the same charge.

The state alleged that by paying buy-
ers for three large packing companies
commissions the men managed prac-
tically to corner the calf market and to
obtain more than the market price for
their calves. It was alleged the three
packing companies lost more than \$200,000
through the transactions of the calf com-
pany.

The Spirit of Giving

It is not so much the value
of a gift that counts as it is
the care used in its selection.
"S. P. U. G." is abroad in
the land.
It stands for the Society for
the Prevention of Useless Giving.
It prospers because there's a
sound, common-sense idea be-
hind it.
If a gift is worth making
at all, it deserves to have some
thought used in its selection.
Better no gift at all than one
that is chosen carelessly, with
no chance of pleasing the re-
cipient.

The advertising columns of
The Bee are now full of sug-
gestions. Study them. Go
through them carefully and
thoughtfully.
Then your gifts will carry
with them the true spirit of
Christmas.
And don't forget—SHOP
EARLY.